

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6664 of 2004
and
SPECIAL CIVIL APPLICATION No 6665 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

DINESH NAGINDAS SHAH

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR RK PATEL for Petitioners
MR MANISH R BHATT for Respondent

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 16/07/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Manish R Bhatt, learned standing
counsel waives service of Rule for the respondent.
In the facts and circumstances of the case, the

petition is taken up for final disposal today.

2. These two petitions are directed against two separate orders dated 8.3.2004 and 9.3.2004 respectively passed by the Commissioner of Income-tax, Ahmedabad rejecting the two petitioners' revision petitions under Section 25 of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act") on the ground that the revision petitions were filed beyond the period of limitation.

3. In both the cases, the petitioners, two in number, submitted that through oversight and because of wrong interpretation of the provision granting exemption under Section 5(vi) of the Act with effect from AY 1994-95, the petitioners did not claim exemption in respect of one house or part of the house belonging to the respective petitioners. The petitioners and their Chartered Accountant were under the belief that with effect from AY 1994-95, the amendment in the Wealth-tax Act by Finance Act 1992 granting exemption under Section 5(vi) was applicable only in respect of the residential house property and not in respect of any commercial property, but while preparing the wealth-tax return for AY 2002-03, the petitioners' Chartered Accountant came to know about the CBDT circular dated 24.7.1973 clarifying that the exemption under Section 5(vi) was applicable for any house or part of the house, whether residential or commercial. Hence, after claiming such exemption for AY 2002-03, the petitioners filed petitions under Section 25 of the Act on 31.3.2003 for AYs 1994-95 to 2001-02. The petitioners prayed that the Assessing Officer be directed to grant exemption under Section 5(vi) for the aforesaid AYs 1994-95 to 2001-02 in respect of the petitioners' office premises situate at Nagindas Chambers, Ashram Road, Ahmedabad.

4. The Commissioner heard the learned counsel for the assessee and held that although the petition under Section 25 was required to be made within a period of one year, the petitioners had filed the revision petition beyond the period of limitation and that there was nothing to show that the assessee was prevented from making applications within the prescribed time. Ignorance of the petitioners and their Chartered Accountant cannot be a ground for condoning the delay; otherwise there will be no finality to the proceedings. The Commissioner accordingly rejected the application for condoning the delay in filing the revision petitions in respect of all the assessment years. That is the order under challenge in these petitions.

5. At the hearing of these petitions, Mr RK Patel, learned counsel for the petitioners has submitted that the impugned orders suffer from vice of non-application of mind. For AY 2001-02, the petitioners had filed original returns on 28.11.2001 and thereafter filed revised returns on 5.9.2002 claiming exemption under Section 5(vi). Since the revised returns were filed within the period of limitation and no intimation was received under Section 16(1), there was no infirmity in the petitioners' claim for exemption for AY 2001-02 and in fact revision petition itself was technically not required to be filed.

It is submitted that the petitioners' request for condonation of delay has not at all been considered in proper perspective by looking to the fact situation and the order is passed merely by looking to the delay of 5 years in filing the revision petition for AY 1994-95 without considering that for AY 2000-01, there was delay of only 4 months in filing the revision petition and even that has not been condoned. Similarly for AY 1999-2000, there was delay of only one year and 2 months in filing the revision petition. For AY 1998-99, there was delay of 2 years and 2 months. For AY 1997-98, there was delay of 2 years and 11 months.

The learned counsel states at the hearing that the petitioners do not press their claim for exemption for AYs 1994-95, 1995-96 and 1996-97 when the amounts involved were small. The petitioners press their challenge to the decision of the Commissioner in so far as the Commissioner has refused to condone the delay in filing the revision petitions for AYs 1997-98 onwards.

The learned counsel has placed strong reliance on the decision of the Apex Court in the case of Collector, Land Acquisition vs. Katiji, (1987) 167 ITR 471 wherein the Apex Court has held that technical considerations are not to be allowed to prevail over substantial justice. By dismissing the revision petitions only on the ground of limitation, the Commissioner has preferred technical considerations to substantial justice inspite of the indisputable legal position flowing from the CBDT circular issued as far back as in 1973 that a house included building for residential purpose as well as the building for commercial purpose.

6. On the other hand, Mr Manish R Bhatt, learned standing counsel for the revenue has opposed the petitions and submitted that when the petitioners had moved the Commissioner after delay of more than 5 years,

the Commissioner was justified in refusing to condone the delay. As far as AY 2001-02 is concerned, the learned standing counsel does not dispute the submission made on behalf of the petitioners that since the petitioners had claimed exemption by filing revised return within one year from the date of filing of the original return, that claim was required to be considered on merits without raising any objection about delay in making the claim.

7. Having heard the learned counsel for the parties, we are of view that in the facts and circumstances of this case, there is substance in the grievance being made by Mr Patel on behalf of the petitioners that the Commissioner while passing the impugned orders appears to have been swayed by the delay of 5 years in filing the revision petitions for AY 1994-95 without considering the fact that for every subsequent assessment year there was lesser delay in filing the revision petition.

8. Upto 31.3.1993, clause (iv) of Section 5 of the Act read as under :-

"one house or part of a house belonging to the assessee and exclusively used by him for residential purposes."

The underlined words came to be omitted by the Finance (No.2) Act, 1971 with effect from 1.4.1972 and the exemption continued till 31.3.1993. Clause (iv) came to be omitted by Finance Act, 1992 w.e.f. 1.4.1993 with the result the exemption was not available for AY 1993-94. However, with effect from 1.4.1994, the said amendment came to be inserted as clause (vi) with the following phraseology :-

"one house or part of a house belonging to an individual or a Hindu undivided family."

After the aforesaid amendment with effect from 1.4.1972, the CBDT issued circular dated 24.7.1973 which reads as under :-

CTR EXPERTS ON DIRECT TAXES

BOARD F.NO. 317/23/73-WT

House used for commercial purposes - Exemption
under Sec. 5(1)(iv)
24/07/1973

I am directed to invite a reference to your

letter, dt. 28th June, 1973 on the above subject and to say that your presumption is correct and exemption u/s 5(1)(iv) is available even for houses used for commercial purpose.

In view of various amendments to the provision for grant of exemption in respect of the house belonging to the assessee and in view of the common parlance where "house" generally would mean residential house and not commercial premises, if the petitioners omitted to claim exemption under Section 5(1)(vi), it cannot be said that in the facts and circumstances of the case delay of upto 3 years was unreasonable. We are, therefore, of the view that when the factual aspects in the present case are considered, in light of the decision of the Apex Court in Collector, Land Acquisition vs. Katiji, (1987) 167 ITR 471, the Commissioner was required to prefer the cause of substantial justice by taking up the revision petitions on merits in respect of AYs 1997-98 onwards.

9. In view of the above discussion, these petitions are allowed. After recording the concession of Mr RK Patel on behalf of the petitioners that the petitioners do not press their claim for exemption under Section 5(1)(vi) for AYs 1994-95 to 1996-97 and after holding that there was no delay on the part of the petitioners in claiming exemption under Section 5(vi) for AY 2001-02, we quash and set aside the impugned order dated 8.3.2004 (Annexure "H" in SCA No.6664 of 2004) and order dated 9.3.2004 (Annexure "G" in SCA No.6665 of 2004) and remand the matter to the Commissioner of Income-tax, Ahmedabad for deciding the revision petitions on merits for AYs 1997-98 to 2000-01.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-